

UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA  
SAN JOSE DIVISION

JACK SMITH,	) Case No.: 13-CV-0595-LHK
	)
Plaintiff,	) ORDER GRANTING APPLICATION TO
v.	) PROCEED IN FORMA PAUPERIS;
	) ORDER CONTINUING CASE
COUNTY OF SANTA CRUZ; JIM ROSS; JIM	) MANAGEMENT CONFERENCE
HART; STATE OF CALIFORNIA; SANTA	)
CRUZ SUPERIOR COURT; SANTA CRUZ	)
BOARD OF SUPERVISORS; and DOES 1-10,	)
	)
Defendants.	)

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Before the Court is Plaintiff Jack Smith's ("Plaintiff") Application to Proceed In Forma Pauperis. *See* ECF No. 2 ("Application").

Under the federal in forma pauperis statute, a court may authorize the commencement of a suit without prepayment of the filing fee required by the clerk of the court if the plaintiff submits an affidavit of poverty showing that he or she is "unable to pay such fees or give security therefor." 28 U.S.C. § 1915(a). However, even if the plaintiff makes an adequate showing of poverty, the Court may deny leave to proceed in forma pauperis if it determines at the outset "from the face of the proposed complaint that the action is frivolous or without merit." *Tripathi v. First Nat'l Bank & Trust*, 821 F.2d 1368, 1370 (9th Cir. 1987); *see also* 28 U.S.C. § 1915(e); *Calhoun v. Stahl*, 245 F.3d 845, 845 (9th Cir. 2001) (per curiam) ("[T]he provisions of 28 U.S.C. § 1915(e)(2)(B) are not limited to prisoners.").

1 Here, Plaintiff's Complaint, which alleges claims for civil rights violations, racketeering,  
2 selective prosecution, assault and battery, and negligent and intentional infliction of emotional  
3 distress, does not appear on its face to be frivolous or malicious. Furthermore, Plaintiff has  
4 declared under penalty of perjury that he is not presently employed; he does not own a home; his  
5 bank account balance is \$100.00; his monthly expenses are \$710.00 and his sole source of income  
6 is \$1,080.00 from Social Security. *See* Application at 1-3. Plaintiff has thus adequately shown that  
7 he is unable to pay the fees required to commence this lawsuit.

8 Accordingly, the Court hereby GRANTS Plaintiff's motion to proceed in forma pauperis.  
9 The Clerk of the Court shall issue summons.

10 No summonses have been issued, and Plaintiff has not yet served any of the Defendants.  
11 Accordingly, to permit Plaintiff additional time to serve Defendants, the Case Management  
12 Conference scheduled for May 15, 2013 is hereby CONTINUED to June 19, 2013, at 2:00 p.m.

13 **IT IS SO ORDERED.**

14 Dated: April 24, 2013

  
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LUCY H. KOH  
United States District Judge